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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 203

ELI LILLY AND COMPANY,

Appellant,

vs.

SAV-ON-DRUGS, INC.,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

BRIEF FOR APPELLEE SAV-ON-DRUGS, INC.

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Question Presented

Does New Jersey's foreign corporation registration law (N.J.R.S. 4:15-3 to 5) contravene the Commerce Clause of the United States Constitution when applied to appellant, which maintains an office and has twenty employees in the State engaged in the promotion of intrastate sales?

Statement

Appellant is an Indiana manufacturer of pharmaceutical products.

Appellee operates two retail drug stores in New Jersey. Appellee buys nothing direct from appellant and has not signed appellant's fair trade contract but is nevertheless

bound by it under the non-signer provision of the New Jersey fair trade law (N.J.R.S. 56:4-6). Appellee purchases all its Lilly products from New Jersey wholesalers.

Appellant instituted this action to enjoin appellee from selling Lilly products below established fair trade prices. Without conceding that it violated appellant's fair trade prices, appellee moved to dismiss the complaint for appellant's failure to comply with New Jersey's foreign corporation registration law (N.J.R.S. 14:15:3 to 5). The motion was granted and the resulting judgment was affirmed by the highest court of the State on the basis of the trial court's opinion (R. 47).

Appellant's business in New Jersey is done in the following manner:

Appellant makes direct sales to New Jersey wholesalers "in interstate commerce pursuant to distributor contracts made in the State of Indiana" (R. 27).

Appellant employs a district manager, secretary and eighteen so-called "detail men" in New Jersey. Their headquarters are in Newark. They are salaried personnel (R. 28-29).

The place where the district manager and secretary have their office and which serves as headquarters for the eighteen detail men who cover the State is listed in the building directory and in the Newark telephone book under the name of Eli Lilly & Company (R. 35). The lease is in the name of the district manager, but it is appellant's name that is on the door, and appellant reimburses the district manager for all expenses incident to the maintenance and operation of the office (R. 28).

The function of the detail men is to promote *intrastate* sales of Lilly products. "They do not accept orders under any circumstances for the purchase of Eli Lilly and

Company products". (R. 29). They transmit orders received from New Jersey retailers to local wholesalers (R. 29, 35). Apparently, they *never* transmit orders directly to the home office in Indiana (R. 28-29).

These local sales are promoted by appellant's detail men by visits to retail pharmacists, physicians and hospitals, in the course of which (1) they describe the various Lilly products and urge that these products be prescribed by the physicians, (2) they check up on "the stocks and inventory of the retailer to ascertain whether the retailer may be carrying a sufficient supply to meet potential demand", (3) they recommend "the enlargement of his available supply", (4) they transmit orders to local wholesalers, (5) they provide retailers with free advertising and promotional material (R. 29, 25-26), (6) they urge pharmacists, physicians and hospitals to "order Lilly products from local wholesale distributors" (R. 27). Appellant also polices its fair trade prices by personal visits (R. 3, 5) in order to protect appellant's property rights in the goodwill which attaches to its trademarks (R. 1-2). The detail men who service appellee's two stores, one in Carteret and the other in Plainfield, have not only done all of these things but have given appellee their home telephone numbers so that appellee can reach them in case of need (R. 25-26). Most, if not all, of the detail men are residents of New Jersey (R. 35).

N.J.R.S. 14:15-3 to 5 provide that a foreign corporation before transacting business in New Jersey must file with the Secretary of State a copy of its charter and a statement describing its capital stock, the character of its business, its principal office in the State and the name and address of a resident agent to accept service of process. Upon the corporation's compliance with the

above, a certificate authorizing it to do business in New Jersey must be issued as a matter of course. A foreign corporation transacting business in New Jersey may not maintain an action in the State until it has obtained such certificate.

Summary of Argument

I

By employing twenty people in New Jersey continuously to generate local purchases of its products from local wholesalers, and by providing a local office for these employees, albeit under cover of a lease made in the district manager's name, appellant is engaged in a form of local activity which is so significantly separate and distinct from its interstate sales to New Jersey wholesalers as to warrant the classification of intrastate commerce. Regardless of appellant's motive, which is indirectly to stimulate interstate sales by directly stimulating local sales, appellant is engaging in the intrastate business of providing a sales force for local wholesalers of Lilly products. *Cheney Bros. Co.* v. *Massachusetts*, 246 U. S. 147, 155 (1918).

For the privilege of carrying on intrastate commerce, New Jersey may require appellant to register with its Secretary of State without contravening the Commerce Clause of the United States Constitution.

II

Even if all of appellant's activities within the State were thought to be exclusively in furtherance of interstate commerce, the burden of New Jersey's foreign corporation registration law is so insignificant when viewed

in the light of the State's legitimate interest in requiring foreign corporations to identify themselves and designate agents for service of process, that it cannot be said to contravene the Commerce Clause. *Union Brokerage Co. v. Jensen*, 322 U. S. 202 (1944).

ARGUMENT

I

Eli Lilly is engaged in intrastate commerce in New Jersey. Therefore, application to it of New Jersey's registration statute does not violate the Commerce Clause of the United States Constitution.

It is clear from the facts in the record that appellant is engaged both in *interstate* and *intrastate* commerce in New Jersey. Its *inter*state commerce consists of the sale of its products to wholesalers in New Jersey "pursuant to distributor contracts made in the State of Indiana" (R. 27). Its *intra*state commerce is conducted from an office in Newark by a district manager, assisted by a secretary and eighteen detail men, all of whom are salaried employees. Appellant also pays for the office. The function of these employees is to promote local sales of Lilly products. In the words of one of Lilly's officers: "The primary purpose of said employees is to acquaint retail pharmacists, physicians and hospitals with the products of Eli Lilly and Company so that the said retail pharmacists, physicians and hospitals will order Lilly products from *local* wholesale distributors" (R. 27, emphasis supplied).

It was upon these undisputed facts, which it reviewed in great detail (R. 35), that the trial court reached its

decision that appellant was doing business in New Jersey. It was likewise with these facts in mind that the court concluded that the Commerce Clause was not violated by the State's requirement that appellant register as a foreign corporation.

Appellant infers that the trial court considered appellant to be "engaged entirely in interstate commerce" (brief, p. 27). What in fact the court said was: "Plaintiff *contends* that it is excepted from any requirements to comply with foreign corporation provisions of our Corporation Act because it is engaged entirely in interstate commerce * * *" (R. 38, emphasis supplied). The court was merely re[illegible]ing appellant's contention, not adopting it. The court thereupon indicated that even if Lilly were engaged essentially in interstate commerce, as appellant contends, New Jersey's requirement that Lilly comply with the State's registration provision would not impose an undue burden on that commerce (R. 38-41).

A more recent decision by the Superior Court of New Jersey (*United States Time Corp. v. The Grand Union Co.*, 64 N. J. Super. 39 (11/16/60)), exempting a foreign corporation from registration under the Act in question, makes clear that the decision in the case at bar was grounded on Lilly's localized activities in New Jersey. In that case, as distinguished from the present case, the foreign corporation's activities in the State were restricted to soliciting and making interstate sales. The court, after describing Lilly's localized activities in New Jersey, noted "that the evidence before the Court in *Lilly* is not present before the court in the case *sub judice*" (*id.* at 46), and hence permitted plaintiff to proceed without registration.

In any event, regardless of the precise basis of the trial court's opinion, this Court is free to affirm a judgment upon any ground which has support in the record. *LeTulle* v. *Scofield*, 308 U. S. 415, 421 (1940) ("A respondent or an appellee may urge any matter appearing in the record in support of a judgment"); *Helvering* v. *Gowran*, 302 U. S. 238, 245 (1937) ("In the review of judicial proceedings the rule is settled that if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason"); *Jaffke* v. *Dunham*, 352 U. S. 280, 281 (1957); *Langnes* v. *Green*, 282 U. S. 531, 535-537 (1931); *United States* v. *American Railway Express Co.*, 265 U. S. 425, 435-436 (1924).

In spite of this settled law to the contrary, appellant argues that appellee may not urge affirmance of the decision below on the ground that Lilly engaged in intrastate commerce in New Jersey, claiming that this is a new contention not relied upon by the court below (brief, pp. 27-28). Not one of the four cases cited by appellant to support this contention is in point. In *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 434 (1907), this Court refused to permit the appellee to urge affirmance upon grounds which ran counter to a material concession that it made below. *Virtue* v. *Creamery Package Mfg. Co.*, 227 U. S. 8 (1913) and *Blair* v. *Oesterlein Machine Co.*, 275 U. S. 220 (1927), dealt with the attempted reversal of lower court decisions on grounds not previously urged. As noted, the rule is different when, as in the instant case, appellee urges affirmance. In the fourth case cited by appellant, *Knetsch* v. *United States*, 364 U. S. 361, 370 (11/14/60), all that this Court held was that it would not entertain for the first time in a brief *amicus*

curiae a contention which had never been raised by the petitioners at any stage of the proceedings.

It is clear that appellant in the case at bar was engaged in intrastate commerce.

It is equally clear that the lower court perceived and relied upon this; but even if such were not the case, this Court could rely upon the demonstrated intrastate commerce to sustain the decision of the lower court.

It follows that application of the foreign registration statute to appellant does not contravene the Commerce Clause. Appellant in its Jurisdictional Statement herein, at p. 11, conceded as much when it said:

> "The rule of the *Paul* case [*Paul* v. *Virginia*, 8 Wall. 168 (1868)] still applies to foreign corporations as regards intrastate commerce in which they engage within a state, even if such intrastate business is done by a corporation which is also engaged in interstate commerce. See, *e.g.*, *Railway Express Co.* v. *Virginia*, 282 U. S. 440 (1931); *General Ry. Signal Co.* v. *Virginia*, 246 U. S. 500 (1918). Such corporations are, of course, required to comply with state qualification statutes."

Additional cases supporting the same proposition are *Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611 (1903); *Interstate Amusement Co.* v. *Albert*, 239 U. S. 560 (1916); and that part of *Cheney Bros. Co.* v. *Massachusetts*, 246 U. S. 147, 154-155 (1918), which deals with Lanston Monotype Co., Locomobile Company of America and Northwestern Consolidated Milling Co.

In its present brief on appeal, appellant has changed its position somewhat, in contending that:

> "Since the present suit is vitally related to appellant's interstate business, it is one that appellant

has the right to bring even if it were also doing some intrastate business" (brief, p. 26).

The cases appellant cites in support of this proposition (*Furst* v. *Brewster*, 282 U. S. 493 (1931); *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197 (1914); *Crutcher* v. *Kentucky*, 141 U. S. 47 (1891)) are not in point. The first two cited cases dealt with the application of state registration requirements to companies engaged exclusively in interstate commerce in the state of the forum; in the third (*Crutcher*), this Court struck down a statute which excluded all foreign express companies from doing business in Kentucky unless they had a capital of at least $150,000.

Moreover, in the two cited cases which denied the foreign corporation's right to bring an action without registering (*Furst* and *Sioux Remedy*), the suits, unlike appellant's, were brought *to enforce interstate contracts.* By contrast, Lilly's suit herein is not upon an interstate contract. Lilly and appellee have never made any such contract. Lilly has never made a single direct sale to appellee. This action relates to appellee's local sales to New Jersey consumers, not to Lilly's interstate sales to New Jersey wholesalers.

The purpose of this action is to protect property rights located in New Jersey, namely, the goodwill inherent in appellant's trademarks (R. 1-2). This Court specifically recognized this property right as the constitutional basis for retail price maintenance. *Old Dearborn Distributing Co.* v. *Seagram-Distillers Corp.*, 299 U. S. 183, 194-5 (1936).

The New Jersey Court of Errors and Appeals in *Johnson & Johnson* v. *Weissbard*, 121 N. J. Eq. 585, 586,

191 Atl. 873 (1937), followed *Old Dearborn* in every regard and commented in addition as follows:

> "Nor do we perceive how the requirements of our statute affect interstate commerce. It is a mere direction to a resident merchant that he must not resell trade marked or branded articles at less than the price fixed by the producer or owner of such marked commodities."

The immediate object and effect of the present litigation could not be more local: it seeks to fix the price of a product sold by a New Jersey retailer (who bought it from a New Jersey wholesaler) to a New Jersey consumer.

That Eli Lilly's activities in New Jersey must be regarded as intrastate in character is also made clear by that part of the opinion in *Cheney Bros Co.* v. *Massachusetts*, 246 U. S. 147, 155 (1918), which concerns Northwestern Consolidated Milling Co. In that case the question was whether the imposition on Northwestern of an excise tax described by the Massachusetts court as "a license fee exacted from foreign corporations for the privilege of doing in this State business other than interstate commerce"* violated the Commerce Clause. As appears more fully from the opinion of the Massachusetts court, which this Court affirmed, reported under the name of *Marconi Wireless Tel. Co.* v. *Commonwealth*, 218 Mass. 558 at 575, 106 N. E. 310 at 317 (1914), Northwestern was a Minnesota corporation which maintained an office in Boston. This office served as headquarters for sixteen salesmen, seven of whom were devoted to Massachusetts trade. "These salesmen solicit and take orders from retail dealers and turn the same over to the nearest wholesale dealer, who fills the order and is paid by the

* 106 N.E. at p. 311

retailer. Thus the salesman, although not in the employ of the wholesaler, is selling flour for him." 246 U. S. at page 155.

On the basis of these facts, this Court concluded:

> "Of course, this is a domestic business,—inducing one local merchant to buy a particular class of goods from another,—and may be taxed by the state, regardless of the motive with which it is conducted." *Ibid.*

Appellant, on page 30 of its brief, attempts to distinguish the above decision on the ground that in its opinion, the Massachusetts court stated:

> "The *major part* of the petitioner's business in Massachusetts is furnishing salesmen to act as agents for the domestic wholesalers in soliciting business from domestic retailers. This is in substance the *business of providing agents* for the wholesalers." (Appellant's emphasis.)

It is submitted that the above statement in fact supports appellee's contention that the Northwestern case is on all fours with the case at bar with reference to the nature of the foreign corporation's business activities in the state of the forum. Lilly's detail men, just like Northwestern's salesmen, never solicit sales in interstate commerce. They *do* transmit some orders from New Jersey retailers to New Jersey wholesalers. Moreover, all of their activities in the state are directed toward promoting *intrastate* sales by New Jersey wholesalers. Repeating the words of appellant's Assistant Secretary, "The primary purpose of said employees is to acquaint retail pharmacists, physicians and hospitals with the products of Eli Lilly and Company so that the said retail pharmacists, physicians and hospitals

will order Lilly products from local wholesaler distributors" (emphasis supplied, R. 27).

The argument made by appellant that its detail men's "sole function is to promote the products appellant sells in interstate commerce" (brief, p. 30) was also advanced by Northwestern, and rejected by the state court in the following language:

> "The motive which influences the plaintiff in undertaking this business is inconsequential in determining whether it constitutes interstate commerce. The fact that a natural result may be to increase the sales of the plaintiff to the wholesalers is an immaterial circumstance. It is too remote from the actual business of the plaintiff's salesmen to constitute that interstate commerce." (106 N.E. at 318).

The above language, of course, applies with equal force to the case at bar. The fact that the wholesalers in both cases received the foreign corporation's products in interstate commerce in no way negatived the fact that its salesmen's (detail men's) activities were intrastate in character.

Finally, appellant suggests that its activities in New Jersey are like those involved in the typical drummer cases, such as *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489 (1887) (brief, p. 30). This demonstrates that appellant misses the whole point of Northwestern (and of *Robbins*), namely, that while the solicitation and promotion of direct sales in interstate commerce is protected by the Commerce Clause, solicitation and promotion of *intra*state sales is not, even though such local sales may *indirectly* result in additional interstate commerce.

II

Even if Lilly's activities in New Jersey are considered to be in furtherance of interstate commerce, the requirement that Lilly comply with that State's registration provision does not impose an unconstitutional burden on interstate commerce.

Appellant's insistence that: "The right to engage in interstate commerce may not be subjected to state-imposed conditions" (subheading of brief, p. 8), simply does not represent the law as it has been developed by this Court. It is not the imposition of any condition that is prohibited by the Commerce Clause, but only the imposition of an unduly burdensome one.

In *Cooley* v. *Board of Wardens*, 12 How. [53 U. S.] 299 (1851), this Court delineated the following principles: (a) where the area of interstate commerce requires a uniform set of rules, the States cannot act, even when Congress is silent; (b) where the problem is such that diversity and local action is not undesirable, the States may act in the absence of federal legislation, even though some burden is imposed on interstate commerce.

State action in the interstate commerce field is permissible *provided*: (1) the regulations do not discriminate against interstate commerce in favor of intrastate commerce, and (2) the burden imposed is not too great in light of competing state and federal interests.

Applying these principles to the present case, it appears that (1) Congress is silent; (2) the subject does not require a uniform set of rules throughout the nation; and (3) there is no suggestion that discrimination is an issue. Thus, the real questions emerge: what is the burden upon

interstate commerce and is this burden justified in the light of the interests of the State?

Such a balancing of interests is the key to the diverse cases dealing with corporate registration requirements and with the licensing of persons in interstate commerce. It underlies and explains the cases cited by appellant which have struck down certain registration and license requirements; as well as those which have upheld others.

In applying this principle, it becomes necessary in each instance where a State's registration or licensing requirement is challenged "to ascertain precisely what demand the State has here made, in relation to what transaction or activity it is making such demand", *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, at 203 (1944).

The demand that the State of New Jersey has made in N.J.R.S. 14:15-3 is simply that every foreign corporation doing business within its borders make its presence known to the Secretary of State by filing in his office a copy of its charter plus a statement describing its capital stock, the character of its business, its principal office in the State, and by designating an agent to accept service of process. Upon the corporation's compliance with the above, a certificate authorizing it to do business must be issued as a matter of course. No discretion is vested in the Secretary of State to refuse registration. Once a foreign corporation registers, it may enforce a contract made before registration. In fact, the corporation may even register during the pendency of the suit and thereupon continue the action. *Protective Finance Corp.* v. *Glass*, 100 N. J. L. 85, 125 Atl. 879 (Sup. Ct., 1924), *Day* v. *Stokes*, 97 N. J. Eq. 378, 127 Atl. 331 (E. & A., 1925). If Lilly files tomorrow, this appeal will be moot.

A mere listing of the requirements of the statute which must be complied with prior to institution of an action

by a foreign corporation doing business in New Jersey indicates that we are not here dealing with an unreasonable burden on interstate commerce.

The most that can be said is that such a corporation is (1) subjected to a minimal amount of paper work, and (2) obliged to designate an agent for service of process in the State. It is submitted that the designation of an agent for service of process can no longer be considered a significant burden on a corporation doing business in another State, in view of the fact that such corporation, even if it has only minimal contacts with such State, is in any event subject to suit therein regardless of whether or not it has designated an agent for service of process. *International Shoe Co.* v. *State of Washington*, 326 U. S. 310 (1945); *McGee* v. *International Life Insurance Co.*, 355 U. S. 220 (1957).

Balanced against this insignificant "burden" imposed on foreign corporations by the New Jersey registration requirement is the State's legitimate interest in insuring (1) that its residents have an easy, certain and expeditious means of serving process on foreign corporations doing business in the State, and (2) that the corporation's presence in the State is brought to the State's attention so that compliance with its unemployment insurance, disability insurance, and workmen's compensation laws (appellant has twenty local employees), as well as its tax and other laws may be assured.*

As noted by Professor Henderson, in his work, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW (1918), at page 74:

> "A state is fundamentally interested in the activities of corporations within its boundaries. It is

* In this connection it may be observed that a corporation whose sales within the State are made exclusively in interstate commerce may now be subjected to a fairly apportioned income tax. *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U. S. 450 (1959).

> interested in the wages which they pay, in the conditions of labor which they maintain, in the price and quality and quantity of their output, in their solvency and honest management, in their accountability before Courts of Justice. But these are interests which attach to domestic corporations as well as to foreign ones. All legislation must be tested, then, by the fundamental criterion whether it is reasonably adapted to securing these interests; and whether it proceeds in its incidence on a classification which bears a reasonable relevance to the practical problem of securing them."

The same approach has been manifested by this Court. In *California* v. *Thompson*, 313 U. S. 109 (1941), this Court considered a California statute which required transportation agents to be licensed in that State. The licensee was required to pay a nominal fee and to post a bond conditioned upon the faithful performance of the contracts negotiated by him. The appellee contended that the statute's application to one who negotiates exclusively for the transportation of interstate passengers violated the Commerce Clause. This Court, sustaining the statute, stated that:

> "Ever since *Willson* v. *Black Bird Creek Marsh Co.*, 2 Pet. 245, and *Cooley* v. *Board of Port Wardens*, 12 How. 299, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce, but which because of their local character and their number and diversity may never be adequately dealt with by Congress. Because of their local character, also, there is wide scope for local regulation without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free

flow of commerce which were the principal objects sought to be secured by the Commerce Clause. Notwithstanding the Commerce Clause, such regulation in the absence of Congressional action has, for the most part, been left to the states by the decisions of this Court, subject only to other applicable constitutional restraints" (p. 113).

Similarly, in *Robertson* v. *California*, 328 U. S. 440 (1946), it was held that a licensing statute applied to persons selling insurance in interstate commerce (which required a $50 filing fee and the posting of a fidelity bond) did not contravene the Commerce Clause. Upon noting that the statute was a reasonable police regulation, enacted for the benefit of its citizens, the Court concluded that "There can be no substantial question concerning its validity on commerce clause grounds. *That is true whether appellant's acts are taken, in their setting, as being 'in' commerce or only 'affecting' it*" (pp. 447-8, emphasis supplied).

In *Duckworth* v. *Arkansas*, 314 U. S. 390 (1941), the Court upheld a statute requiring a permit for the transportation of intoxicating liquor through the State. The permit was obtainable upon application and payment of a nominal fee. The object of the license regulation was merely to identify those who engaged in such transportation, their rates and points of destination. Although, in view of the fact that the transportation of liquor was involved, the case might have been decided under the provisions of the Twenty-First Amendment (as was urged by Justice Jackson in a concurring opinion), it is significant that the Court's opinion considered only the effect of the Commerce Clause. In upholding the license requirement, the Court said:

"It does not forbid the traffic in liquor, nor does it impede it more than is reasonably necessary to

> inform the local authorities who is to effect the transportation through the state, and to afford opportunity for them to police it" (p. 393).

See also *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U. S. 329 (1951), wherein extensive regulations governing the distribution of natural gas in interstate commerce were upheld, in view of the State's vital interest in such sales.

The principle underlying these decisions embraces protection of state interests not only in particular situations where it is thought that there may be abuses, but applies equally to the protection of the general welfare of the State. This is made clear by *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202 (1944), which dealt with a Minnesota foreign corporation registration law, practically identical to the one involved in the case at bar. In *Union* an unregistered foreign corporation was engaged in the customs brokerage business, which, in the language of the Court, " 'aids in the collection of customs duties and facilitates the free flow of commerce between the foreign country and the United States' " (p. 209). In the course of that business, Union had "localized its business, and to function effectively, it [had to] have a 'wide' variety of dealings with people in the community" (p. 210).

Because of Union's failure to register in Minnesota, it was barred from maintaining an action against defendants for breach of their fiduciary obligation to the corporation. Addressing itself to Union's claim that the registration requirement violated the Commerce Clause, this Court noted at the outset that:

> "It becomes necessary therefore to ascertain precisely what demand the State has here made,

> in relation to what transactions or activity it is making such demand, in what way federal authority has regulated such transactions or activity, and, finally, whether the Commerce Clause by its own force, in case federal law has not actually taken control, excludes the State from the exercise of the power it has here asserted" (p. 203).

The Court, after concluding that the State could properly legislate despite the presence of federal customs law, stated the crucial issue to be the effect of the registration statute on the Commerce Clause:

> "In a situation like the present, where an enterprise touches different and not common interests between Nation and State, our task is that of harmonizing these interests without sacrificing either" (pp. 207-208).

The Court noted that Minnesota "is legitimately concerned with the interests of its own people in business dealings with corporations not of its own chartering but who do business within its borders" (p. 208), and went on to state, in language which is equally applicable to the situation at bar:

> "The incidence of the particular state enactment must determine whether it has transgressed the power left to the States to protect their special state interests although it is related to a phase of a more extensive commercial process.
>
> "The information here sought of all foreign corporations by Minnesota as a basis for granting them certificates to do business within her borders is a conventional means of assuring responsibility and fair dealing on the part of foreign corporations coming into a State. Apart from any question of interference with foreign commerce such a require-